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Neutral Citation No. - 2023:AHC:218846

Judgment reserved on 31.10.2023

Judgment delivered on 17.11.2023

Court No. - 69

Case :- CRIMINAL APPEAL No. - 2258 of 1984

Appellant :- Rajendra Kumar Awasthy

Respondent :- State of U.P.

Counsel for Appellant :- K.N. Dwivedi, Vindesh Kumar

Counsel for Respondent :- A.G.A.

Hon'ble Samit Gopal, J.

1. The present Criminal Appeal under Section 374(2) Cr.P.C. has been preferred by the appellant Rajendra Kumar Awasthy, against the judgment and order dated 10.8.1984 passed by IV Additional District and Sessions Judge, Kanpur (now Kanpur Nagar) in Sessions Trial No.291 of 1983 (State of U.P. Vs. Anil Kumar and two others) whereby the trial court has convicted and sentenced the appellant Rajendra Prasad Awasthi for offences under Section 376 IPC to 3 years R.I, under Section 366 IPC to 2 years R.I. and Section 363 IPC to 1 year R.I. The sentences have been ordered to run concurrently. Further benefit of set off under Section 428 Cr.P.C. has been extended to the appellant. By the aforesaid judgement accused Anil Kumar and Lalla have been acquitted of the charges levelled against them for offences under Section 368 IPC. The said acquittal is not under challenge.

2. The name of the prosecutrix is not being disclosed and mentioned in the present judgment in the light of directions of the Apex Court in various judgments and as per Section 228A of the Indian Penal Code. She is, thus, referred to as victim 'X' in the judgment.

(2)

3. The facts of the case are that an application dated 31.1.1983 was given by Vishnu Swaroop Agarwal to S.H.O, Police Station Harvansh Mohal, Kanpur alleging therein that his daughter victim 'X' aged about 14 years is studying in class 10th in Tagore Bal Mandir. On 25.1.1983, she and other children went to the school on a rickshaw which was fixed for her of Rajendra Prasad Awasthi, the rickshaw puller. In the evening when she did not return back with other children, Rajendra was asked about it on which he said that the victim 'X' is having her extra classes and she would go to the house of her maternal grand-mother after the classes which is in Kachiyana Mohal and even on 26.1.1983 she will be having her extra classes. It is further alleged that on 30.1.1983, the teacher of the school came to his house and asked about the children not coming to school on which he was informed that the rickshaw puller did not come to bring the children from 26.1.1983 on which the teacher was asked that the victim 'X' must be attending the school from the house of her maternal grand-mother to which he replied that she is not coming to the school. Then information was sought from the house of her maternal grand-mother on which it came to be known that she did not come to her place on 25.1.1983 and even after it as told by Rajendra. The victim 'X' is being searched since yesterday but she is not traceable and it has come to be known that since 25.1.1983 even Rajendra is not traceable from the said date. It transpires that the rickshaw puller Rajendra has lured victim 'X' and enticed her away. He prays that a report be lodged and his daughter be searched and appropriate action be taken immediately. He has attached photograph of the victim and the rickshaw puller with the said application. The said application is Ext. Ka-2 to the records.

4. On the basis of the said application a FIR was lodged on 31.1.1983 at 13.30 hours at Police Station Harvansh Mohal, District Kanpur against

Rajendra, the rickshaw puller by Vishnu Swaroop Agarwal which was registered as Case Crime No.38 of 1983 under Sections 363, 366 IPC. The investigation started and a site-plan was prepared by the Investigating Officer on 31.1.1983, the same is exhibited as Exb: Ka-10 to the records.

5. Subsequently during investigation the victim was recovered on 1.2.1983 at 4.55 a.m. with accused Rajendra Kumar from a room. A recovery memo to the said effect was prepared, the same is exhibited as Exb: Ka-12 to the records.

6. The victim was subjected to medical examination on 1.2.1983 at 9 a.m. by Dr. K. Johari, Medical Officer, Dufferin Hospital, Kanpur and the doctor did not find any recent injury on her body. On internal examination, the doctor noted as follows:-

“Vagina admits two fingers easily. Hymen torn old tear present. Vaginal smear negative for sperms.”

The opinion as given by the doctor is as follows:-

“In my opinion the girl is used to sexual intercourse so it cannot be said that rape has been committed on her or not.”

The victim was sent for x-ray examination for determination of her age. The said medical examination is exhibited as Exb: Ka-4 to the records.

7. X-Ray examination of the victim was conducted by Dr. R.K. Gupta on 3.12.1983. He gave his report regarding ossification, the same is exhibited as Exb: Ka-6 to the records.

8. On the basis of said x-ray report a supplementary examination report of the victim ‘X’ was prepared by Dr. K. Johari on 7.2.1983 in which

opinion regarding age was given as follows:-

“According to X-Ray report, the girl is about 14 years (fourteen) years of age.”

The said report is exhibited as Exb: Ka-5 to the records.

9. The investigation concluded and charge sheet no.48 of 1983 dated 28.2.1983 under Section 363, 366, 368, 376 IPC was submitted against Rajendra Prasad Awasthi, Anil Kumar and Lalla. The same is exhibited as Ext.Ka-16 to the records.

10. Vide order dated 24.9.1983 passed by Additional District and Sessions Judge, Kanpur charge under Sections 363, 366 and 376 IPC was framed against the appellant Rajendra. Against co-accused Lalla and Anil Kumar charges were framed vide order dated 24.9.1983 passed by Xvth Additional District and Sessions Judge, Kanpur under Section 368 IPC. The accused pleaded not guilty and claimed to be tried in trial.

11. In the trial Smt. Saroj Gupta, the Principal of Tagore Bal Mandir was examined as P.W.1, Vishnu Swaroop Agarwal, the first informant and father of the victim 'X' was examined as P.W.2, victim 'X' was examined as P.W.3, Dr. Karuna Johari who conducted medical examination of the victim and gave a supplementary report was examined as P.W.4, Dr. R.K. Gupta who gave the x-ray report was examined as P.W.5, Head Constable Suresh Sharma who transcribed the Chik FIR and prepared other documents was examined as P.W.6, Kaviraj who proved the G.D. and filed a copy of it which was transcribed by someone was examined as P.W.7 and Sundar Lal Verma, S.I. who was the Investigating Officer of the matter and recovered the victim 'X' was examined as P.W.8.

12. The accused-appellant in his statement recorded under Section 313 Cr.P.C. has denied the prosecution case and has stated that he has been falsely implicated due to enmity. The accused did not lead any defence evidence.

13. P.W.1 Smt. Saroj Gupta stated that she is the Principal of the college where the victim was studying. She states of the victim not coming to school from 25.1.1983. She further states that as per the school register, the date of birth of the victim 'X' as recorded therein is 4.2.1969.

14. P.W.2 Vishnu Swaroop Agarwal is the first informant and father of the victim 'X' who states of his lodging of the FIR. He states that the victim 'X' was having date of birth 4.2.1969. He corroborates the prosecution story as stated by him in the FIR.

15. P.W.3, the victim 'X' states that in January 1983, she was studying in Tagore Bal Mandir. She states that she studied in class VI, VII and VIII from there. She states that she used to go on a rickshaw of the appellant to school. She further states that the accused from before the incident used to tell her to go to Mumbai with him. On her refusal, he used to state that he has photo of her sister and get her marriage settled. He states that he has friends in Mumbai. He got her photograph clicked by stating that he would send it to Bombay. On 25.1.1983, she went to school. She took the school fees from the house. She states of going with the accused-appellant.

16. P.W.4, Dr. Karuna Johari conducted the medical examination of the victim 'X' and prepared the supplementary report. Her findings have already been mentioned above.

17. P.W.5 Dr. R.K. Gupta conducted X-Ray examination of the victim

and gave it's report on the basis of which he gave a supplementary medical examination report, opined her age.

18. P.W.6. Head Constable Suresh Sharma prepared Chik FIR and other relevant documents at the police station.

19. P.W.7 Kaviraj proved the G.D. of the case and filed a copy of it, the same was transcribed by another person which was proved by him.

20. P.W.8 Sundar Lal Verma conducted the investigation of the matter and recovered the victim 'X' and arrested the appellant and filed charge sheet subsequently.

21. The trial court after conclusion of trial convicted and sentenced the accused-appellant as stated above.

22. Heard Sri Vindesh Kumar, learned counsel for the appellant, Sri Ajay Singh, learned A.G.A-I for the State and perused the records of this appeal and also the trial court records.

23. Learned counsel for the appellant argued that the appellant has been falsely implicated in the present case. It is argued that the victim 'X' went with the appellant out of her own sweet-will. She travelled with him without any resistance or objection. It is argued that the victim was not found to have received any injury on her body. It is argued that the medical examination report of the victim does not corroborate the prosecution story. It is argued that as such the trial court has committed an error in convicting the appellant. The implication of the appellant is without any credible evidence. The impugned judgement and order of the trial court deserves to be set-aside, the appellant is liable to be acquitted and appeal deserves to be allowed.

(7)

24. Per contra learned counsel for the State has opposed the arguments of learned counsel for the appellant and argued that the appellant is named in the FIR who is the person who took the victim with him. The victim was a minor girl aged about 14 years at the time of incident. The trial court has meticulously examined the matter on merits and passed the impugned judgement. The present appeal deserves to be dismissed.

25. After having heard the learned counsel for the parties and perusing the records, it is evident that the prosecution case is of the victim being enticed away by the accused-appellant. She was apprehended with the accused-appellant from a room. There is nothing on record and in the statements of the victim which would dislodge the recovery of the victim with the appellant. There are allegations of sexual assault upon the victim by the accused-appellant. She was aged about 14 years at the time of incident. The judgement and order of the trial court is a well reasoned and a well considered judgement. No ground for interference is made out.

26. The appeal stands dismissed. The judgment and order of the trial court is hereby affirmed. The appellant Rajendra Kumar Awasthi is in jail. He shall serve out the sentence as awarded to him by the trial court.

27. The office is directed to send the certified copy of this judgment along with the trial court records to the trial court concerned for necessary information and follow-up action.

(Samit Gopal, J.)

Order Date :- 17.11.2023

Gaurav